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FISCAL IMPACT STATEMENT

LS 6678

BILL NUMBER: HB 1386

NOTE PREPARED: May 16, 2007

BILL AMENDED: Apr 29, 2007

SUBJECT: Federal Sex Offender Bill.

FIRST AUTHOR: Rep. Lawson L

FIRST SPONSOR: Sen. Bray

BILL STATUS: Enrolled

FUNDS AFFECTED: X GENERAL
X DEDICATED
X FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- A. *Changes to Sex Offender Registry* – It adds: (1) promoting prostitution as a Class B felony; (2) promotion of human trafficking if the victim is less than 18 years of age; (3) sexual trafficking of a minor; (4) human trafficking if the victim is less than 18 years of age; and (5) possession of child pornography as a first offense; to the list of offenses requiring a person to register as a sex offender. It specifies that registration as a sex offender is not required for: (1) a parent or guardian who is convicted of kidnapping or confining a child of the parent or a child over whom the guardian has guardianship; or (2) a person convicted of sexual misconduct with a minor as a Class C felony if the person is not more than four or five years older than the victim (depending on when the offense was committed) and the court finds that the person should not be required to register. It changes the name of the Sex Offender Registry to the "Sex and Violent Offender Registry" and requires persons convicted of murder or voluntary manslaughter to register on the Sex and Violent Offender Registry under the same conditions applying to registration by sex offenders. It removes the lifetime registration requirement for sexual battery as a Class D felony, and imposes the standard ten-year registration requirement. It establishes a procedure to permit certain offenders required to register in accordance with older laws to register in accordance with new laws.
- B. *Changes in Sentences for Sex Offenders – Child Pornography:* It specifies that, for purposes of the child pornography statute, a person may not possess certain material depicting or describing sexual conduct by a child who: (1) the person knows is less than 16 years of age; or (2) appears to be less than 16 years of age. *Child Seduction:* It makes it a Class B felony for a person to commit child seduction by using a computer network if the person has a previous unrelated conviction for committing the offense by using a computer network. *Increased Sentence for Class A Child Molesters:* It prohibits the suspension of the first 30 years of the sentence for certain serious child

- molesting offenses.
- C. *New Offenses Added to Offender Against Children Statute* – It specifies that a person is an offender against children if the person engages in a conspiracy to commit or attempts to commit an offense that would make the person an offender against children.
 - D. *Sex Offender Registration Fee* – It permits a county to adopt: (1) an annual sex offender registration fee that does not exceed \$50; and (2) a sex offender address change fee that does not exceed \$5. It provides that 90% of each fee is deposited in the county sex offender administration fund, and 10% of each fee is transferred to the state for deposit in the state Sex Offender Administration Fund. It specifies that the funds are to be used for expenses related to the operation of the Indiana Sex Offender Registry.
 - E. *Lifetime Parole for Sexually Violent Predators with Suspended Sentences* – It requires a sexually violent predator whose sentence does not include a commitment to the Department of Correction (DOC) to be placed on lifetime parole.
 - F. *Sex Offender Registration Procedures and Fingerprint Information* – It requires the DOC to maintain records on certain sex offenders who are no longer required to register in Indiana. It requires a local law enforcement authority to notify the DOC and update the National Sex Offender Registry database when a sex offender registers or the registration information changes. It makes numerous other changes to sex offender registration procedures. It permits the DOC to report certain fingerprint information to the State Police Department, and makes certain other changes relating to fingerprinting.
 - G. *Evaluating Sex Offenders* – It requires a court to consider expert testimony before determining that a juvenile is likely to be a repeat sex offender, and establishes a procedure for psychological evaluation of sex offenders to determine if they are sexually violent predators.
 - H. *Exceptions to Sexually Violent Predator Law* – It provides that a person who is not more than four years older than the victim, was involved in a dating relationship with the victim, and did not use violence in the commission of the offense is not a sexually violent predator if certain other conditions are met, and provides a similar defense to sexual misconduct with a minor. It establishes a procedure to permit an offender against children to petition a court to have the designation removed. It permits a court to suspend the sentence of a person convicted of nonviolent child molesting who is not more than four years older than the victim, who was involved in a dating relationship with the victim, and who meets certain other conditions. It specifies that "school property", for purposes of the offender against children statute, does not include the property of an institution providing postsecondary education.
 - I. *Defense to Child Molesting* – It provides that the mistake-of-age defense to child molesting does not apply when the offense was committed by means of violence or the use of a drug. It adds a culpability standard to a criminal statute relating to the use of limited criminal histories.
 - J. *Lifetime Parole for Offenders Sentenced for Murder or Voluntary Manslaughter* – It requires persons in Indiana convicted of murder or voluntary manslaughter to be placed on lifetime parole.
 - K. It reestablishes the Sentencing Policy Study Committee to evaluate sentencing laws and policies for an additional four years.
 - L. It provides that a juvenile court does not have jurisdiction over an individual for attempted murder. It makes other changes, conforming amendments, and technical corrections.

(The introduced version of this bill was prepared by the Sentencing Policy Study Committee.)

Effective Date: Upon passage; July 1, 2007.

Explanation of State Expenditures: The following table summarizes the effects that this bill would have

on the DOC and the Indiana State Police.

<i>Changes in Definitions of Sex Offenders and Sexually Violent Predators</i>	
<p>Added Categories for Sex Offenders – adds performing sexual conduct in the presence of a minor, first-time possession of child pornography, promoting prostitution as a Class B felony, promotion of human trafficking if victim younger than 18, sexual trafficking of a minor human trafficking if victim younger than 18 to sex offender definition.</p> <p>New Exceptions for Sex Offenders – allows court to not require certain persons guilty of sexual misconduct with a minor as Class C felony to register as sex offender; parents or guardians convicted of kidnaping or criminal confinement of children under 18 do not have to register as sex offenders.</p>	DOC would need to renegotiate its contract with software vendors, added one-time costs of between \$75,000 and \$180,000. (see background below for more information)
<p>Added Categories for Sexually Violent Predators - include offenders convicted of attempt or conspiracy to commit sex offense; with prior conviction as delinquent child. Sexually violent offenders not committed to DOC would be on lifetime parole (note: offenders sentenced for vicarious sexual gratification can have suspended sentence if first-time offense).</p> <p>Added Defense in certain situations where consensual sex occurred and person is not more 4 years older than victim.</p>	Sexually violent predators are placed on lifetime parole with GPS monitoring after release; minimal impact, 16 sex offenders committed to DOC in 2006 for attempt or conspiracy to commit sex crime.
<i>Changes in Penalties</i>	
<p>New Offense -- Sex offenders intentionally not residing at registered address commit a Class D felony as a first offense and Class C felony if prior unrelated offense.</p>	See <i>Background on Criminal Penalties</i> .
<p>Enhanced Offense -- Child solicitation using a computer network with a previous unrelated conviction for the same crime would commit a Class B felony (currently a Class C felony).</p>	
<p>New Offense -- child seduction when member of armed forces or national guard attempting to enlist child between 16 and 18 years of age who is victim (Class D felony).</p>	
<p>Making Exception to serving mandatory minimum if offender is convicted of Class B child molesting, the victim is not less than 12 years old, and offender not more than 4 years older than victim and has no prior convictions for a sex offense.</p>	Currently, a person sentenced as an adult must serve a minimum 6 years for a Class B felony; under this exception offender could be placed on probation or in community corrections instead. Of 567 adult Class B child molesters on Jan. 2, 2007, two offenders were 16 or 17 at time of sentence.
<i>Changes in Length of Stay for Certain Offenders</i>	
<p>Nonsuspendible 30-Year Sentence for Offenders sentenced for child molesting involving sexual intercourse or deviate sexual conduct if the person is at least 21 and the victim is less than 12.</p>	An estimated 155 new beds would be needed by 2022; (see explanation and table under <i>30-Year Nonsuspendible Sentence for Certain Class A Child Molesters</i>)

Registration and Info Processing	
Allows DOC to report fingerprints of sex offenders to State Police.	Some transitional costs to develop forms for forwarding information between DOC and State Police.
Maintain records of every sex offender who is incarcerated, relocated out of state, no longer required to register as sex offender.	Additional computer space needed for DOC in future years.
Registration of sex offenders must include vehicle description and vehicle plate number.	

Added Offenses to Sex Offender Registry- This bill would require DOC to renegotiate its contract with vendors who administer the Indiana Sex Offender Registry. The Sex Offender Registry has two components for public use:

- a web page with the name, address, and picture of each offender.
- a geographical information system component that shows each offender on maps of varying scale.

The DOC coordinates with the Indiana Sheriffs' Association to input offender information into a database. DOC then contracts with APPRISS Inc. to develop this information into a series of web pages with the offender's name, address, and recent picture. The current contract with APPRISS for initial costs was \$173,000, and DOC has a continuing contract to pay \$4,000 per month for maintenance. This maintenance contract expires on January 22, 2008.

The Office of the Attorney General contracts with Map Muse Inc. for developing the on-line maps of where sex offenders are located. The current contract for the services of Map Muse is \$42,100 and expires in January, 2008.

To add a menu option for (1) promoting prostitution as a Class B felony; (2) promotion of human trafficking if the victim is less than 18 years of age; (3) sexual trafficking of a minor; (4) human trafficking if the victim is less than 18 years of age; and (5) possession of child pornography as a first offense to the list of offenses requiring a person to register as a sex offender, DOC estimates the costs to range between \$75,000 (to add the five specific offenses and rename the registry) and \$180,000 (to redesign the registry to allow for future changes at lower cost).

The following describes the features of these two options in greater detail.

<u>Option</u>	<u>Features</u>	<u>Cost</u>
Adds five specific offenses and renames the registry	Modifications would be made to the tool that local sheriffs use to collect data, the public uses to view data, APPRISS uses to transmit data to the National Sex Offender Public Registry, and APPRISS uses to provide data to MapMuse.	\$75,000
Redesigns registry to allow for future changes at lower cost	Sex and violent offenders would be in separate groups requiring registration and available for presentation to the public. Reduces future programming costs to add new registration requirements and new groups of offenders.	\$180,000

Background on Criminal Penalties: The following table shows the minimum, advisory, and maximum sentences for Class B, C, and D felonies.

Felony Class	Minimum	Advisory	Maximum
B	6 years	10 years	20 years
C	2 years	4 years	8 years
D	6 months	1.5 years	3 years

The average expenditure to house an adult offender was \$22,734 in FY 2006. (This does not include the cost of new construction.) If offenders can be housed in county jails under contract with a local sheriff, the costs to the DOC would be \$35 daily, or \$12,775 annually.

30-Year Nonsuspendible Sentence for Certain Class A Child Molesters - Based on a sample of 50 randomly selected Class A offenders committed to DOC in CY 2006, 73% had victims who were less than 12 years of age. Of these offenders, 38% had sentences of less than 30 years. Applying these statistics to the total Class A child molester offender population, an estimated 31 offenders could be incarcerated for up to an additional 10 years beginning in 2017.

Offenders Affected by Change in Sentencing		
Total Class A Child Molesters		113
Percent with Victim under 12*	x	<u>73%</u>
Offenders with Victim less than 12		82
Percent of Offenders with Victim less than 12 and Sentence less than 30 Years*	x	<u>38%</u>
Offenders Affected by this Bill		<u>31</u>
* Based on a sample of 50 randomly selected Class A offenders committed to DOC in CY 2006		

This sentencing change would increase the need for new beds for DOC beginning in roughly 2017 and peaking in 2022. An estimated 155 new beds would be needed by 2022.

Offense	Offenders Committed Annually	Avg. Prison Term in Years	Year of Release If Offenders Are Sentenced in 2008			
			50% of Sentence Served		50% of Sentence Served	
			Years Spent in Prison Before Release	Earliest Year of Release	Years Spent in Prison Before Release	Earliest Year of Release
Child Molesting Fel. A	31	20	10	2017	15	2022

Based on the average costs of incarcerating an offender of \$22,734 in FY 2006, the added costs to the Department of Correction would be \$3.5 M. (155 offenders x \$22,734)

Lifetime Parole for Offenders Convicted of Murder or Voluntary Manslaughter – Persons Convicted of Murder or Voluntary Manslaughter – The number of ex-offenders who have been released and living in communities or on probation is not known. There are currently 155 offenders who are on parole who were incarcerated for murder and 46 on parole for voluntary manslaughter. These include the offenders who were sentenced in courts from other states and transferred to Indiana under the Interstate Compact. There are also 455 offenders who are projected to be released from DOC between 2007 and 2016 who are incarcerated for murder and 208 projected to be released who are incarcerated for manslaughter for the same period of time.

Offenders who are sentenced for murder or voluntary manslaughter after June 30, 2007, will be required to be on parole for the rest of their lives after they are released from incarceration. Based on offenders who received a determinative sentence for murder or for voluntary manslaughter between 2002 and 2006, requiring offenders to be on parole for the rest of their lives will begin to take effect in 2023, as offenders who were committed to DOC after June 30, 2007, for either voluntary manslaughter or murder will be released from DOC and begin their period of post-incarceration supervision.

Offenders sentenced for voluntary manslaughter will be released first. On average, 29 offenders were committed each year with an average sentence of 31 years. Offenders committed to DOC for murder or voluntary manslaughter committed after July 1, 2007, will begin being released in 2023. Assuming that these offenders live to the age of 77, they will be on parole for an additional 30 years. The additional number of offenders who will be on parole after 2053 will be 870 (29 offenders per year X 30 years).

Offenders sentenced for murder after June 30, 2007, will begin being released after 2044. The average age of offenders released would be 67. If these offenders live for an additional ten years, the added number of offenders who will be on lifetime parole for murder is 990 (99 offenders per year X 10 years).

Offense	Average Offenders Committed	Average Sentence	Average Age At Sentence	Year of Release for Sentence in 2007	Age at Release
Murder	99*	73	31	2044	67.5
Voluntary Manslaughter	29	31	31	2023	46.5
* Committed with determinative sentence, on average eight offenders sentenced to life without parole Source: Offenders Sentenced for Murder, CY 2002 through 2006					

Explanation of State Revenues: *Federal Byrne Grants*- Meeting the requirements of federal law within Indiana's sex offender registry statute is one of several conditions that must be met for the state to receive

federal Byrne Grants. A recent change in federal law allows for the removal of certain types of sex offenders (as specified in the bill) required to register under state statute. The state received about \$6 M in Byrne Grants during FFY 2005 and about \$3.7 M in FFY 2006.

State Sex Offender Administration Fund -- If all counties in Indiana adopt ordinances to collect the Sex Offender Registration Fee at the maximum rate of \$50, the estimated revenue that the state would receive would be \$40,955. Money in the fund would be used by the DOC to carry out its duties in administering the Indiana Sex Offender Registry. (See also *Explanation of Local Revenues*.)

Explanation of Local Expenditures: The following table describes the added responsibilities that would be assigned to local law enforcement agencies for monitoring and managing the movements of sex offenders and sexually violent predators.

<i>Monitoring and Management</i>	
Sex offenders employed or volunteering to work for more than 7 days in the state (currently 14 days).	The DOC received responses from eight local law enforcement agencies concerning a survey of the costs of registering and monitoring sex offenders. On average, each agency spent about \$52 for each registration visit.
Probation departments forward information on sentencing to DOC for sex offenders not committed to DOC.	
Requires local law enforcement agencies to update National Crime Center Data Base and notify DOC if sex offender changes residential address or employment.	
Sex offenders with no home must register every 7 days with local law enforcement agency.	
Sexually violent offenders must report to local law enforcement agency and be photographed every 90 days.	

Note – When a sex offender registers with their county sheriff, the sheriff takes the offender's name (including all known aliases), date of birth, Social Security number, driver's license number, residential address, and work address. Additionally, the sheriff photographs the offender and sends the information, including photograph, to the Sex Offender Registry maintained by the Indiana Sheriffs' Association.

Background on Sexual Offenders and New Registry Offenses- There are currently 624 sex offenders that are on parole supervision. Over the next three years, it is anticipated that approximately 800 additional sex offenders will be released.

Explanation of Local Revenues: *Sex Offender Administration Fee* – Any revenue generated will depend on the number of county councils that pass an ordinance allowing for this fee to be charged and the level of the fee. The DOC reports that in January 2007, 8,191 sex offenders were in the Sex Offender Registry statewide. If all 92 counties enact ordinances at the maximum \$50 per offender, the new revenue generated would be \$409,550. The county share of 90% would be \$368,595. This new revenue would be required to be deposited in the County Sex Offender Administration Fund.

A county legislative body can adopt an ordinance to charge \$5 each time that a sex offender changes their address. The added revenue from this fee is not currently able to be determined.

State Agencies Affected: DOC; Indiana Criminal Justice Institute; Indiana State Police; Indiana Judicial Center.

Local Agencies Affected: Trial courts; local law enforcement agencies.

Information Sources: Department of Correction; Indiana Sheriffs' Association; Steven King, Indiana Criminal Justice Institute, 317-234-1653; Indiana Sentencing Policy Study Committee Draft Minutes, September 18, 2006, meeting.

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